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SUPREME COURT OF ARIZONA

PETITION TO AMEND THE ARIZONA)	
RULES OF CIVIL PROCEDURE AND)	
RELATED RULES)	Supreme Court No. R-16-_____
)	
)	With Request to Allow
)	a Modified Comment Period
_____)	

Pursuant to Arizona Supreme Court Rule 28, the Task Force on the Arizona Rules of Civil Procedure (“Task Force”) requests this Court to amend the Arizona Rules of Civil Procedure (“ARCP”). Because the proposed amendments concern *all* of the current civil rules, this petition presents the revisions as a complete new set of civil rules rather than as individual rule amendments. Appendix A contains a clean version of the proposed rule amendments; a redline version is in Appendix B. A detailed, rule by rule description of the amendments—including key substantive changes—is set forth in Appendix C. Appendix D contains a “disposition table,” identifying the current rules that have been deleted or relocated.

Part I: Background. Administrative Order 2014-116 established this Task

Force in November 2014. The Order directed the Task Force

...to review the Arizona Rules of Civil Procedure to identify possible changes to conform to modern usage, to clarify and simplify language, and to avoid unintended variation from language in counterpart federal rules. These changes should promote access to the courts and the resolution of cases without unnecessary cost, delay, or complexity. The Task Force shall seek input from various interested persons and entities with a goal of submitting a rules petition by January 2016 with respect to any proposed rules changes.

Task Force members include four judges (from Division One and from the Superior Court in Maricopa, Pima, and Coconino Counties); eleven attorneys (from two public entities and a legal aid organization, and from large and small law firms in Maricopa, Pima, and Yavapai Counties; and who have personal injury and commercial practices that represent both plaintiffs and defendants); a Clerk of the Superior Court; and a law school professor of civil procedure. The undersigned serve as Task Force co-chairs.

The proposed rule amendments are the most extensive set of revisions to the ARCP since their adoption in 1956. The original ARCP was modeled largely on the Federal Rules of Civil Procedure, and the proposed amendments adopt many stylistic changes that were made to the federal rules in 2007. The Task Force's proposed rules include substantive changes as well as stylistic revisions. The substantive changes proposed here include some of the substantive amendments to the federal rules that became effective on December 1, 2015.

Part II: General Principles. The Task Force adhered to the following principles in recommending the proposed rule amendments:

1. The rules should be written for fairness and clarity. They should not present traps for the unwary.
2. Arizona courts should be accessible to civil litigants, including self-represented litigants.
3. Where an existing comment addressed or clarified a substantive requirement of a rule, the Task Force proposal incorporates the requirement into the rule itself, where feasible. As a general matter, comments should not be necessary to interpret a rule's requirements.
4. Where existing case law clarifies or interprets an ambiguity in a current rule, the Task Force proposal modifies the rule to remove the ambiguity and, in some cases, incorporates interpretive case law.
5. With regard to counterpart federal rules:
 - (a) If no good reason exists to depart from the recently restyled language of a federal rule, the Arizona rule should adopt the restyled federal wording verbatim.
 - (b) If there are good reasons for an Arizona rule to differ from a corresponding federal rule, the Arizona rule should maintain those differences. However, even in these circumstances, and to enhance the clarity of the Arizona rule, a rule's wording should be revised and its structure reorganized under a consistent set of restyling conventions.
6. If an Arizona rule has recently undergone substantive revisions, the Task Force should be reluctant to revisit the substantive change. Similarly, if this Court has recently rejected a substantive change to a rule, it should not be proposed again.
7. Rules concerning electronic information need to be modernized to meet the realities of identifying, handling and producing electronic data in a

rational and cost-effective fashion, and in a manner consistent with the new commercial court's e-discovery processes.

Some stakeholders have reasonable but different perspectives on policy-driven issues, and, as to these, the Task Force may have decided not to take a position. One example is the difference between plaintiff and defense bars on whether to allow recording of medical examinations under Rule 35. Similarly, the plaintiff and defense bars are deeply divided over how the current arbitration rules (Rules 72 through 77) should be amended. Stakeholders may comment on these issues to the extent they are presented in the proposed rule petition, but some issues may be better and more comprehensively addressed if interested stakeholders file later, issue-specific, and standalone rule petitions.

Task Force members also were mindful throughout this project of efforts in Arizona and in other jurisdictions to reform the system of justice for civil disputes. Rule 1 of Arizona's civil rules recites objectives for "the just, speedy, and inexpensive determination of every action," yet there are those who believe the reality is far different, and that civil cases take too long and cost too much. Some want civil litigation reform to come quickly. Others believe that cultural changes in civil justice should occur gradually and incrementally.

The project's main goal was not reforming the civil justice system. However, the proposed rules strive to promote the worthy objectives of Rule 1. Thus:

(1) The proposed rules shorten unnecessarily long time periods whenever that was feasible. For example, the Task Force proposes amending the deadlines for responding to interrogatories, production requests, and requests to admit to thirty days rather than the current forty days. That change would also conform Arizona's practice to the federal practice.

(2) The proposed amendments also require parties to engage in early discussions and attempt to reach agreements regarding electronically stored information. Those amendments would encourage parties to focus on producing what's really necessary in a case, reducing the cost of litigation accordingly.

(3) Another provision proposes giving a trial court the authority to order that the parties confer with the judge before they file discovery motions, which also has the potential to save time and to reduce costs.

(4) The proposed amendments also include new rules regarding good faith consultation and joint filings, which are intended not only to improve the efficiency of litigation, but also to enhance civility among advocates.

The Task Force fully recognizes its proposed amendments will not be completely acceptable to every stakeholder. But the Task Force worked diligently to build consensus and to draft rules that are fair to everyone, and it believes the work product shown in the appendices clearly shows that. While the proposed

rules are not the end point of civil justice reform, the Task Force respectfully submits that they represent a big step in the right direction.

Part III: Methodology. Currently, the ARCP includes more than one hundred rules, with more than four hundred subparts. Dozens of those numbered subparts are no longer in use, or have been “deleted,” “abrogated,” “renumbered,” or “re-designated.”

To divide the review of these rules among the Task Force members, the chairs established four workgroups at the first Task Force meeting. Three of the four workgroups were led by a current or former member of the State Bar’s Civil Practice and Procedure Committee. Each workgroup included a judge and one of the Task Force chairs.

Each of the four workgroups was assigned about one-fourth of the current rules. The workgroups met independently to study their assigned rules and, when appropriate, to compare corresponding federal rules. The workgroups revised every rule, although revisions to some rules were only minor or stylistic. Each workgroup’s work-product was then brought to the full Task Force for consideration. Some of the proposed revisions required little discussion, but other rules were complex or controversial and were discussed at multiple meetings. In the thirteen months following the entry of Administrative Order 2014-116, the workgroups met more than forty times, and the full Task Force met sixteen times.

Overall, the Task Force’s end work-product—as shown in the appendices—reflects an investment of thousands of hours by its members.

Part IV: Restyling Changes. The proposed amendments include stylistic revisions that make the civil rules more comprehensible and user-friendly. The elements of restyling include:

- Using informative headings and subheadings;
- Breaking up long sentences, or collapsing them into fewer words;
- Converting a lengthy rule into shorter subparts, which makes it easier to find particular provisions;
- Using lists;
- Avoiding repetition;
- Using “plain English” and an active voice;
- Stating things in a positive form; and
- Avoiding legal jargon and ambiguous terminology, including the word “shall.” (The proposed rules, with a single exception in Rule 56, replace “shall” with “must,” “may,” “should,” or “will,” depending on the context.)

The proposed rules use consistent formatting and nomenclature. The stylistic revisions generally follow the conventions recommended in Bryan Garner’s *Guidelines for Drafting and Editing Court Rules* (1996), which were also followed in stylistic revisions of the Federal Rules of Civil Procedure and the Federal Rules

of Evidence. To facilitate legal research, the restyled rules kept the same rule numbers, with certain exceptions detailed in Appendices C and D.

Part V: Substantive Changes. Appendix C details the proposed amendments on a rule-by-rule basis. Many of the rules are changed only in stylistic, non-substantive ways. However, there are a number of substantive changes. The following non-exhaustive list gives examples:

- There are new rules. For example, a new Rule 5.2(c) details requirements for electronically filed documents. Proposed Rule 7.1(h) defines the elements of a “good faith consultation” when a rule requires parties to engage in that consultation before filing a motion. New Rule 7.4 addresses “joint filings.” And Rule 37(g) sets forth parties’ obligations to preserve electronically stored information before and after reasonably anticipated litigation is filed.
- Rule 42(f) has been bifurcated into a new Rule 42.1 (“change of judge as a matter of right”) and Rule 42.2 (“change of judge for cause”). Proposed Rule 42.1(c)(1) includes a new early deadline for exercising a notice of change of judge—with some exceptions, a party may file a notice no later than 90 days after it appears in a case.
- Verification requirements in current Rule 11(b) are restated in a new Rule 8(i)), while verification requirements in current Rule 9 and 11 are eliminated. The proposed amendments to Rule 11 also include many of the changes proposed in the State Bar’s recent rule petition (No. 15-0004), which would substantially change the current provisions governing sanctions for frivolous filings.
- The scope of discovery under Rule 26(b) conforms more closely to its federal counterpart, as amended in December 2015, to underscore a court’s authority to limit discovery based on the needs of the case, the parties’ resources, the amount at stake, and other relevant considerations.

- Under the disclosure provisions in Rule 26.1(b)(2), the parties have a duty to confer and attempt to reach agreement on the disclosure and production of electronically stored information.
- As noted earlier in this petition, the time for responding to interrogatories, requests for production, and requests for admissions under Rules 33, 34, and 36 has been reduced from forty days to thirty days.
- Rules 54 and 58 were substantially revised to require that judgments generally include any awarded costs and attorney's fees, and that they clearly state whether they are final for appellate purposes.
- Some rules were moved for better overall organization. For example, Rule 6(d) concerning orders to show cause is proposed Rule 7.3. The amendments would move a portion of Rule 25(e) regarding substitution of public officers to Rule 17(d) regarding parties, which would conform to the organization of the federal rules.

Part VI: Rule Comments. The proposed amendments delete many of the comments in the existing rules that have outlived their usefulness. When an existing comment includes a substantive requirement, an effort was made to include the requirement in the rule itself. The proposed rules retain some comments that continue to provide users with essential information or practical guidance. The Task Force also has proposed a number of new comments, to call attention to a significant, substantive change to a rule.

The proposed rules add a “prefatory comment.” A prefatory comment was added to the Arizona Rules of Evidence as part of the 2012 amendments to those rules, and a prefatory comment was included with the 2015 revisions to the Arizona Rules of Civil Appellate Procedure. The proposed ARCP prefatory

comment identifies significant reasons for these revisions; describes the two general types of changes (stylistic and substantive), and gives examples of substantive changes; provides direction on the use of existing case law; and provides guidance for using comments contained in earlier versions of the rules.

Part VII: Preliminary Stakeholder Comments. Before filing this petition, the Task Force sought stakeholder comments on a “vetting draft.” The Task Force provided that draft to numerous individuals and organizations, including but not limited to the following: presiding superior court judges; associations of superior court clerks and administrators; the Arizona Chamber of Commerce and Industry; the Goldwater Institute; the Arizona Prosecuting Attorneys Advisory Council; the three major Arizona legal aid societies; associations of plaintiff and defense tort attorneys; the court reporters’ association; the chair of the Advisory Committee on the Federal Rules of Civil Procedure; and deans of Arizona’s three law schools. The State Bar of Arizona sent an email to more than 18,000 active and judicial members that included a link to the vetting draft.

The Task Force chairs invited comments from all of these individuals and organizations. Their cover letter included the address of an electronic mailbox where comments could be sent to the Task Force. The Task Force thereafter received a number of comments concerning the vetting draft from judges,

attorneys, and organizations (including the Attorney General’s State Government Division, the Arizona Chamber of Commerce and Industry, and the Pima County Bar Association). Some of these comments concerned a single rule; other comments concerned a number of rules. The Task Force considered each of these pre-petition comments and made appropriate changes to its drafts.

The Task Force also held three meetings concurrently with meetings of the State Bar’s Civil Practice and Procedure Committee. That committee spent months reviewing the vetting draft and providing suggested revisions. In addition, the Task Force chairs presented the vetting draft to the Committee on Superior Court and to the Arizona Judicial Council, both of which approved motions supporting the work of the Task Force. The chairs also made an “information only” presentation to the Superior Court Presiding Judges.

Part VIII: Request to Amend Other Rules. The Rules of the Arizona Supreme Court, as well as sets of Arizona procedural rules governing actions in trial courts and the Court of Appeals, refer to specific ARCP rules or subparts of those rules. Some of the proposed ARCP rules have different numbers than current rules, or have new section designations within an existing rule number. A portion of those cross-references therefore require conforming amendments. Because those numbers and designations may change after the initial comment period, these conforming amendments will be included with an amended petition.

Prior to filing an amended petition, the Task Force also will review the forms contained in the Rule 84 Appendix of Forms. If necessary, the amended petition will request conforming amendments to assure the accuracy of the forms' cross-references to particular rules.

Part IX. Request for a Modified Comment Period. The Task Force acknowledges that this petition proposes a large number of changes to the ARCP. Although the Task Force has already received extensive comments that are incorporated in the proposed amendments, additional public comments may address items that the Task Force overlooked, or may suggest other changes that improve the proposed amendments. The Task Force therefore requests that the Court enter an order allowing a modified comment period to accommodate the filing of an amended petition after an initial round of public comments. The Task Force suggests the following dates:

April 1, 2016:	First round of comments due
May 13, 2016:	Amended petition due
June 10, 2016:	Second round of comments due
July 8, 2016:	Reply due

Part X. Conclusion. The Task Force requests that the Court: (1) open this petition for comments during the modified periods described above; and (2) subject to any modifications proposed by an amended petition, abrogate the current ARCP

and comments, and adopt the proposed amended ARCP and accompanying comments.

RESPECTFULLY SUBMITTED this __ day of January, 2016

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